356-57 (1993) ("We begin our analysis by identifying the particular conduct on which the Nelsons' action is 'based'...."); *Arriba Ltd. v. Petroleos Mexicanos*, 962 F.2d 528, 534 (5th Cir.), *cert. denied*, 502 U.S. 956 (1992) (a "necessary prerequisite" to the jurisdictional analysis is a clear understanding of the plaintiff's claim); *Joseph v. Office of the Consulate General*, 830 F.2d 1018, 1023 (9th Cir. 1987), *cert. denied*, 485 U.S. 905 (1988) ("focus only on those *specific* acts that form the basis of the suit").

The specific conduct of the foreign state plays no part in the Fifth Circuit's jurisdictional analysis. In *Brown*, the Fifth Circuit went so far as to authorize District Courts to exercise jurisdiction over foreign states when plaintiffs use *in globo* allegations -- which conceal the specific conduct of the foreign state.[3/]

The substitution of *in globo* allegations in lieu of the specificity mandated by Congress not only eliminates Step-One of the FSIA's jurisdictional analysis, but necessarily eliminates Step-Two as well. Step-Two of the FSIA

[3/] The *Brown* Respondents argue that they satisfied their evidentiary burden under the FSIA by offering numerous examples of commercial activity and expert opinions of equipment defects (also utilizing the *in globo* format). Neither the District Court nor the Fifth Circuit made such evidentiary findings. The District Court relied only on the complaint and conceded that the allegations of the complaint, which attributed all conduct to all defendants without any specificity as to any individual defendant, were "somewhat generic." (App. 50a.) The Fifth Circuit also limited its analysis to the allegations of the complaint and concluded that the *in globo* nature of the allegations did not detract from their specificity (App. 17a n.10), a contradiction in itself.

requires proof of a direct nexus between the specific conduct underlying the claim against the sovereign and the sovereign's commercial activity. See e.g. *Compania Mexicana*, 859 F.2d at 1360; *Zedan*, 849 F.2d at 1513-14. Obviously, if plaintiffs are not required to disclose the specific conduct underlying their claims, no nexus can be established between those unspecified claims and the commercial activity of the foreign state.

THE FSIA MANDATES A SPECIFIC JURISDICTIONAL ANALYSIS FOR CLAIMS AGAINST A FOREIGN STATE

The *Aldy* and *Brown* decisions render 28 U.S.C. § 1605(a)(2) mere words without meaning, as demonstrated by Respondents' and the Fifth Circuit's statements that "VPI has received fair notice of the activities upon which the subject matter jurisdiction ... is premised." (Respondents' Brief at 5; App. 17a.) "Fair notice" of the claims is not at issue. The FSIA concerns itself with the jurisdiction of the Federal courts, not the notice pleading requirements necessary to state a claim in the Federal courts.

Federal courts are courts of limited jurisdiction, and therefore a party that invokes that jurisdiction must clearly establish the jurisdictional basis in order to proceed. *See, e.g., Kokkonen v. Guardian Life Ins. Co.*, 114 S. Ct. 1673, 1675 (1994). Rule 8(a)(1), Fed. R. Civ. P., gives effect to that requirement, providing: "[a] pleading ... shall contain (1) a short and plain statement of the grounds upon which the court's jurisdiction depends ...." Inasmuch as the FSIA is the sole basis for jurisdiction over foreign states,

Argentina Republic v. Amerada Hess Shipping Corp., 488 U.S. 428, 443 (1989), and the commercial activity exception mandates both the particularization of the claim and a direct nexus between the claim and specific activity by the foreign State, the District Court has no jurisdiction over any matter until both of these prerequisites are established. The Fifth Circuit's decision in *Brown* to permit the District Court to assert jurisdiction merely when the foreign state is provided "fair notice" of the claims eviscerates the FSIA and Congress' express limitation on the jurisdiction of the Federal courts.

If the *Aldy* and *Brown* decisions remain uncorrected, then the courts of the Fifth Circuit will stand alone among the circuits in expanding the jurisdiction of the Federal courts over foreign states to any claim involving general commercial activity relating in any way to vague and generalized claims. As a result, Congress' enactment of the FSIA in response to the requests of both the State and Justice Departments for "a uniform statutory explication of the requirements for sovereign immunity," will be defeated in the Fifth Circuit. *Stena Rederi AB v. Comission de Contratos*, 923 F.2d 380, 385 (5th Cir. 1991).[4/]

[4/] Petitioners choose not to respond to the *ad hominem* attacks and charges contained in Respondents' Brief. The compelling need for the Court to grant the Petition for Writ of Certiorari and reaffirm Congress' express purpose of establishing a uniform standard governing the jurisdiction of the Federal courts over foreign states engaged in international commerce is only further demonstrated by Respondents' inability to support the Fifth Circuit rulings in *Aldy* and *Brown* with legal precedent or logical argument, but resort instead to personal attacks on Petitioners and their counsel.

For each of the foregoing reasons, the decisions of the Fifth Circuit in *Aldy* and *Brown* present significant issues that need to be resolved by the Supreme Court and, accordingly, the Petition for Writ of Certiorari should be granted.

Respectfully submitted,

Michael Evan Jaffe*
David L. Kelleher
Arent Fox Kintner
Plotkin & Kahn
1050 Connecticut Ave., N.W.
Washington, DC 20036-5339
(202) 857-6000
Counsel for Petitioners

Michael B. Wallace
Phelps Dunbar
200 South Lamar
Suite 500
Jackson, MS 39201
(601) 352-2300

*Counsel of Record